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Montana Legislative Council

December, 1970

Report No. 31

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PROPERTY TAXATION

RIGHT OF ENTRY

A REPORT TO THE FORTY-SECOND
LEGISLATIVE ASSEMBLY

by the

MONTANA LEGISLATIVE COUNCIL

December 1970

Report No. 31

To Members of the Forty-Second Legislative Assembly:

The enclosed report is a result of one of the directives of Senate Joint Resolution No. 5 and the directive of Senate Resolution No. 10.

The directive in Joint Resolution No. 5 was in effect a duplicate research request, since the "Montana Fiscal Affairs Study" embraces the same material. The Fiscal Affairs Study has most effectively "plowed this ground" and the conclusions of this report are self-explanatory.

Research regarding Resolution No. 10 disclosed the fact that, while a frustrating problem does exist, it can only be corrected by a constitutional change.

Respectfully submitted,

*SENATOR FRANK W. HAZELBAKER
Chairman
Montana Legislative Council*

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1969 - 1970

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PART ONE

PROPERTY TAXATION

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL EXPAND ITS STUDY OF PROPERTY TAXATION CONDUCTED DURING THE 1959-60 INTERIM WHICH WAS SUPPLEMENTED BY ITS STUDY OF PROPERTY TAXATION AND THE PROPERTY CLASSIFICATION LAW CONDUCTED DURING THE 1963-64 INTERIM, ITS STUDY OF TAXATION CONDUCTED DURING THE 1965-66 INTERIM AND ITS STUDY OF THE CORPORATION LICENSE TAX CONDUCTED DURING THE 1967-68 INTERIM AND INCLUDE IN THIS EXPANDED STUDY CONCLUSIONS REGARDING THE EQUITY OF THE PRESENT TAX STRUCTURE AND ANY RECOMMENDATIONS NECESSARY TO MAKE TAXATION MORE EQUITABLE IN MONTANA.

WHEREAS, during the 1959-60 interim the Legislative Council conducted a study of property taxation in Montana, and during the 1963-64 interim conducted a supplemental study of property taxation and the Montana property classification law, and

WHEREAS, although substantial improvement in appraisal and assessment of properties for taxation has been made in recent years, serious and inequitable variations in assessment levels still appear to exist, and additional problems in property taxation remain to be solved, and

WHEREAS, during the 1965-66 interim the Legislative Council, with assistance from professional economists from the University of Montana, Montana State University, and the State Board of Equalization conducted a study of the Montana tax structure, and

WHEREAS, due to limitations of time and data available, this study was essentially a study of the taxation of individuals, and

WHEREAS, during the 1967-68 interim, the Council conducted a study under two resolutions, one requesting a study of the corporation license tax and the other requesting a study of all aspects of the taxation of corporations in Montana, and

WHEREAS, because of the emphasis on the Montana corporation license tax, the 1967-68 study was restricted to that tax only, excluding other aspects of the taxation of corporations in the state, and

WHEREAS, during the conduct of these two studies, a substantial amount of data were collected and prepared in form for analysis by computers, and

WHEREAS, the data collected are essentially for yearly periods, yet data covering a period of time must be available before firm conclusions can be drawn regarding the equity of taxation in the state, and

WHEREAS, there is a need for a determination of the equity of taxation under the present tax structure of the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council is requested to expand its study of taxation conducted during the 1965-66 interim and its study of the Montana corporation license tax conducted during the 1967-68 interim.

BE IT FURTHER RESOLVED, that the Legislative Council is requested to expand its study of taxation conducted during the 1965-66 interim and its study of the Montana corporation license tax conducted during the 1967-68 interim.

BE IT FURTHER RESOLVED, that the Legislative Council is requested to include in this expanded study, data covering a period of several years for each tax, data on all aspects of the taxation of corporations in the state, and conclusions regarding the equity of the present tax structure together

with any recommendations necessary to make taxation more equitable in Montana.

BE IT FURTHER RESOLVED, that the Legislative Council is requested to expand its study of property taxation conducted during the 1959-60 interim and its study of property taxation and the Montana Property Classification Law conducted during the 1963-64 interim, particularly with respect to the appraisal and assessment of properties for taxation and the functioning of the Property Classification Law.

BE IT FURTHER RESOLVED, that the Legislative Council may, in its discretion, appoint any necessary advisory persons or groups in the conduct of this study and may request assistance from the State Board of Equalization and units of the Montana University System.

BE IT FURTHER RESOLVED, that the Legislative Council may retain any consultants necessary for the conduct of this study.

BE IT FURTHER RESOLVED, that the Legislative Council is requested to submit a formal report, together with implementing legislation if necessary, to the Forty-Second Legislative Assembly.

BE IT FURTHER RESOLVED, that the Secretary of State is directed to send copies of this resolution to the Executive Director of the Legislative Council and the Chairman of the State Board of Equalization.

CHAPTER I

INTRODUCTION

Senate Joint Resolution No. 5, as adopted by the Forty-First Legislative Assembly, made two different requests of the Legislative Council. The first asked the Council to "expand its study of property taxation conducted during the 1959-1960 interim which was supplemented by its study of property taxation and the property classification law conducted during the 1963-1964 interim." The second part related basically to the corporation license tax and individual income tax, and has been made the subject of Montana Legislative Council Report No. 35.

In addition, the resolution asked the Council to reach "conclusions regarding the equity of the present tax structure and any recommendations necessary to make taxation more equitable in Montana."

The resolution authorized the Legislative Council, at its discretion, to appoint any necessary advisory persons or groups in the conduct of the study and to request assistance from the State Board of Equalization and units of the Montana University System. It also authorized the Council to retain any consultants necessary for the conduct of the study.

As in the preparation of Montana Legislative Council Report No. 35, the Council felt that it had two alternatives in complying with the part of the resolution relating to property taxation. The first would have been to hire outside consultants at considerable cost to the state for the preparation of the report. Instead, the Council chose to use the services and staff of the Interim Committee on Fiscal Affairs, thus avoiding additional expense to the citizens of the state, while at the same time avoiding a duplication of effort.

The Interim Committee on Fiscal Affairs employed Dr. William D. Diehl as director of the Montana Fiscal Affairs Study. Seventy-eight thousand two hundred dollars was appropriated from the state's General Fund and additional money was made available from the federal government for the study. The resource available for the Montana Fiscal Affairs Study made it obvious to the Council that it ought not attempt to duplicate the study as it (the Council) had neither the money, time or staff to do so. As a result, the Council carefully reviewed the preliminary comprehensive property taxation section of the Montana Fiscal Affairs Study, Chapter 9, and accepted this report as a continuing study of the property taxation situation in Montana.

CHAPTER II

CONCLUSIONS AND RECOMMENDATIONS

The Council understands that the Montana Fiscal Affairs Study will be made available to all members of the Forty-Second Legislative Assembly as well as to the Council. The vast amount of material in the Montana Fiscal Affairs Study is made without recommendation and individuals will have to draw their own conclusions. The Council, therefore, offers no proposed legislation, anticipating however that individual legislators will introduce bills proposing reforms in taxation.

The Council, after review of Chapter 9, preliminary draft of the Montana Fiscal Affairs Study, "The Property Tax," concludes that it would be unable to improve upon Chapter 9 and recommends that this chapter be used as the background data by the members of the Forty-Second Legislative Assembly, both as individuals and as a body.

PART TWO

RIGHT OF ENTRY

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL CONDUCT A STUDY TO DETERMINE THE NEED FOR PROVISIONS REVERTING MINERAL RIGHTS TO THE OWNER OF REAL ESTATE IF TAXES ARE UNPAID FOR TEN YEARS BY THE LESSEE.

WHEREAS, in the leasing of mineral rights there very often is a lack of care and attention by the lessee toward promptly paying the various taxes now imposed, and

WHEREAS, it would be in the general public interest to facilitate such prompt payment and settlement of accounts; and

WHEREAS, the possibility for reverting such mineral rights to the owner of the land if the lessee failed to pay the proper taxes for ten (10) years, and the imposition of this provision would be an inducement to more prompt tax payments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA: That the Legislative Council is hereby requested to conduct a comprehensive study of the present status of taxes relating to mineral rights and determine the desirability and feasibility of causing a mineral rights reversion to the owner of the property where taxes are unpaid for ten (10) years.

BE IT FURTHER RESOLVED, that the Legislative Council is requested to report its findings, together with recommendations and any necessary implementing legislation, to the Forty-Second Legislative Assembly.

BE IT FURTHER RESOLVED, that the Secretary of the Senate is instructed to send a copy of this resolution to the Legislative Council.

CHAPTER I
INTRODUCTION

Senate Resolution No. 10 of the 1969 Legislative Assembly requested the Legislative Council to conduct a study to determine the need for provisions reverting mineral rights to the owner of real estate if taxes are unpaid for ten (10) years by the lessee. The resolution noted that the imposition of a provision to revert mineral rights if the lessee failed to pay the taxes would be an inducement to more prompt tax payments.

CHAPTER II

GENERAL

Article XII, Section 3, of the Montana Constitution, prohibits the taxation of minerals which are still "in place" in the ground. The tax on these minerals is levied according to Section 84-301 and Section 84-302, R.C.M., 1947. These statutory provisions impose a tax on the net proceeds realized on the minerals after they have been extracted from the ground. These net proceeds are taxed at 100% of full value.

In 1921, the tax classification mentioned above was amended to include a tax on the right to enter upon land to explore or prospect for minerals. This tax was to be imposed upon the person who held this right of entry.

The Montana Supreme Court decision in Northern Pacific Railway Company v. Musselshell County 54 Mont. 96 (1917) held "that the right . . . to such use of surface of land as may be necessary for the exploration, mining or carrying away of coal that may be found below, is a taxable interest in the land itself, and as such properly subject to taxation."

As a result of this decision and the effect of the statute, the taxation of a "right of entry" has been a troublesome area for tax assessors as there has not been a way to establish the value of this right.

A recent survey by the Subcommittee on Property Taxation showed that many tax assessors did not tax the right of entry while others assessed at rates from 25¢ per acre to \$3.00 per acre.

Upon nonpayment of taxes due on real property for three years, statutory procedure calls for the county to sell a tax deed to the delinquent properties. Since the right of entry is a property right subject to taxation, it would be sold by the county after three delinquent tax years. This procedure prevents a right of entry from reverting to the property owner. His remedy would be to buy this right from the county after the taxes had gone unpaid for three years.

A decision of the Montana Supreme Court on September 8, 1970, changed the law on the right of entry. In Cranston v. Musselshell County, the Court held that there is a difference between a reserved right of entry and a conveyed right of entry. By this decision, a conveyed right of entry is not a proper subject of taxation while the reserved right of entry is taxable.

This decision means that the lessee or owner of a conveyed right of entry does not have to pay taxes on this right and as a result there is nothing to revert to the owner of the real property for failure to pay taxes.

In view of the Supreme Court ruling of September 8, the directive of Senate Resolution No. 10 cannot be followed as there can be no reversion without any basis for such reversion.

CHAPTER III

CONCLUSIONS

Senate Resolution No. 10 asked the Legislative Council to recommend legislation to revert mineral rights to the owner of the property upon nonpayment of taxes by the lessee. In view of the recent Supreme Court ruling, the Legislative Council cannot introduce or recommend any legislation as it is impossible under the law and the Montana Constitution to do so.

